UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF ILLINOIS EAST ST. LOUIS DIVISION

CORY HEMRICH and)
COOPER OGBORN, Individually and	
on behalf of all others similarly situated,)
Plaintiffs,))) Case No. 3:15-CV-445-DRH-SCW
vs.)
DRAFTKINGS, INC.,)
Defendant.)

<u>DEFENDANT'S RESPONSE IN OPPOSITION TO PLAINTIFFS'</u> <u>MOTION TO STRIKE DEFENDANT'S REPLY BRIEF IN SUPPORT</u> OF MOTION TO DISMISS

Defendant DraftKings, Inc. ("DraftKings") responds in opposition to Plaintiffs' Motion to Strike Defendant's Reply Brief in Support of Motion to Dismiss (Doc. No. 32) as follows:

DraftKings expressly stated the exceptional circumstances supporting the filing of its Reply in the first paragraph of that Reply as required by Local Rule 7.1(c). Those exceptional circumstances were the necessity "to correct significant misstatements of law and address new arguments raised in Plaintiffs' Opposition." The remainder of the Reply set forth the specific misstatements of law and addressed the new arguments raised in Plaintiffs' Opposition.

DraftKings will not needlessly duplicate those same arguments here, especially in light of the fact that this Court's local rules, by prohibiting sur-reply briefs, do not envision additional briefing after a reply brief is filed.

This Court is fully able to review the Reply Brief and determine whether exceptional circumstances warranted its filing, and DraftKings respectfully submits that such exceptional circumstances do exist.

WHEREFORE, Defendant DraftKings, Inc. prays that this Court enter an Order denying

Plaintiffs' Motion to Strike Defendant's Reply Brief in Support of Motion to Dismiss.

DATED: September 28, 2015 Respectfully submitted,

HEPLERBROOM LLC

618-656-1364 fax

By: __/s/ W. Jason Rankin_

Theodore J. MacDonald, Jr. #3125246 email: tjm@heplerbroom.com W. Jason Rankin #6237927 email: wjr@heplerbroom.com 130 North Main Street P.O. Box 510 Edwardsville, Illinois 62025 618-656-0184 telephone

GIBSON DUNN & CRUTCHER LLP
James P. Fogelman, admitted *pro hac vice*email: jfogelman@gibsondunn.com
Austin V. Schwing, admitted *pro hac vice*email: aschwing@gibsondunn.com
Timothy W. Loose, admitted *pro hac vice*email: tloose@gibsondunn.com
333 S Grand Avenue
Los Angeles, California 90071
213-229-7000 telephone
213-229-7520 fax

Attorneys for Defendant, DraftKings, Inc.

PROOF OF SERVICE

I hereby certify that I electronically filed on September 28, 2015, the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

/s/ W. Jason Rankin